

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CASE NUMBER: 3:15-CR-00052 JD

DAVID FELSKI

Defendant.

_____ /

DEFENDANT'S SENTENCING MEMORANDUM

The Defendant, David Felske, submits the following for the Court's consideration at the sentencing herein:

Sentencing Guidelines

In the final Presentence Report [Doc. No. 14], the maximum term of imprisonment was reported to be 10 years. (Paragraph 68). The sentencing guidelines range would ordinarily be 100 months to 125 months, but the presentence report concluded that because the maximum term of imprisonment was 10 years, the sentencing guidelines range was 100 to 120 months. Neither party objected to that report. [Doc. No. 15]. The government's sentencing memorandum [Doc. No. 16], however, contends that the maximum sentence is 20 years, and that the sentencing guidelines range would be 100 to 125 months.

Mr. Felske disagrees with the government's assessment of the penalties. The Seventh Circuit held in *United States v. Buchmeier*, 255 F.3d 415 (7th Cir. 2001), that a charge of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g) and possession of a stolen firearm in violation of 18 U.S.C. § 922(j), where the firearm was the same firearm, was a single

offense. Mr. Felske can accordingly be sentenced on only one offense. The maximum sentence that the Court could impose would accordingly be 10 years, not 20 years.

The parties had no other disagreements as to the sentencing guidelines.

Proposed Conditions of Supervision

Mr. Felske has no objections to the proposed conditions of supervision as contained in the final presentence report.

Factors Pursuant to 18 U.S.C. § 3553(a)

Mr. Felske is 25 years of age. He has a background of significant physical and mental abuse as a child, and a history of both substance abuse, including alcohol and marijuana. A drug screening was not administered, but it is clear that because of a history of drug use, Mr. Felske would benefit from drug treatment. Mr. Felske also has a history of mental health issues. The Court should recommend a facility where he can receive both a mental health evaluation and participation in the Residential Drug Abuse Program.

Mr. Felske is otherwise in good health. He has a stable family relationship, and is married and supports his wife's daughter. He serves as a father figure to that child, and appears to be a good family person. Despite the history of abuse, he maintains good contact with his mother and step-father and with his siblings.

Mr. Felske has been incarcerated previously. He made good use of that time, completing both his GED and college credits. He has a limited employment history, due in part to his prior record.

Defendant's Suggested Sentence

The term of imprisonment under the statute for Mr. Felske's offenses is up to ten years. The maximum sentence should be reserved for those presenting the greatest risk and the greatest danger to the public. Mr. Felske does not appear to fall into either category. His Criminal History Category is significantly elevated because he was found guilty of violating no-contact orders on two occasions. The no-contact order was secured by the family of his 16-year old girlfriend. He was 18 at the time. The circumstances show a lack of judgment rather than a criminal intent. His criminal history appears overstated because of these no-contact violations.

Based on the foregoing, Mr. Felske suggests that a sentence somewhat below the guidelines at 84 months (the equivalent of a Criminal History Category IV) would be a sentence which is sufficient, but not greater than necessary, to meet the purposes of sentencing.

Dated: November 9, 2015.

Northern District of Indiana
Federal Community Defenders, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2015 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Donald J. Schmid
Assistant United States Attorney.

/s/ H. Jay Stevens
H. Jay Stevens, Staff Attorney
Northern District of Indiana
Federal Community Defenders, Inc.